

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )  
OF BRIAN WATER CORPORATION FOR ) CASE NO. BRN-W-12-01  
AUTHORITY TO INCREASE ITS RATES )  
AND CHARGES FOR WATER SERVICE ) ORDER NO. 32566  
)**

---

On March 7, 2012, Brian Water Corporation (“Brian Water” or “Company”) filed an Amended Application/Letter requesting authority to institute a customer assessment in order to fund a water system study to bring the Company into compliance with a consent order issued by the Idaho Department of Environmental Quality (IDEQ). The Company proposed a May 1, 2012 effective date. On April 12, 2012, the Commission received a copy of the IDEQ Consent Order.

On April 25, 2012, the Commission issued a Notice of Application and Modified Procedure establishing a 21-day comment period. Staff was the only party to submit written comments regarding Brian Water’s Application within the established comment period.

**AMENDED APPLICATION**

In its Amended Application, Brian Water states that “another \$22.50 needs to be added to the monthly base rate” in order “to pay for ‘Nitrate Mitigation’ as ordered by the DEQ.” *Application* at 1. Brian Water states that the additional funds “will be used to pay the engineering fee and then pay for a new, deeper well.” *Id.* The Amended Application included a letter of agreement from a licensed professional engineering firm, JCLC, LLC, to complete the engineering work for the nitrate mitigation plan mandated by the IDEQ. The cost of completing the engineering study is listed as \$4,000, per the letter of agreement.

**STAFF COMMENTS AND RECOMMENDATIONS**

In its comments, Staff recounted the pertinent aspects of the IDEQ’s Amended Consent Order:

- (a) Brian Water must complete its nitrate mitigation plan by June 1, 2012:
  - i. Employ a professional engineer to evaluate various treatment options to mitigate nitrate and provide written documentation to the IDEQ.

- ii. Execute an interconnection agreement with an existing public water system for interconnection and service.
- (b) Brian Water and the engineer shall schedule and attend a nitrate treatment pre-design meeting with IDEQ no later than June 15, 2012.
- (c) No later than December 15, 2012, the owner of Brian Water shall submit to IDEQ a Preliminary Engineering Report (PER) that explains how the water system will comply with the Consent Order. The PER will include identification of available alternatives to meet the nitrate maximum contaminant level (MCL) and treatment requirements, and a proposed project implementation schedule for the recommendation(s) selected.

*Staff Comments* at 2-3, Attachment 1.

Staff believes “that the Company’s request for an increase [in its] rates is intended to generate enough additional revenue to pay for an engineering study to develop an appropriate nitrate mitigation plan, implement the plan, and drill a new well if necessary.” *Id.* at 2. Staff anticipates that the Company’s Preliminary Engineering Report will “identify alternatives for compliance, and include cost estimates for each alternative.” *Id.* at 2-3.

Once Brian Water has prepared and submitted a “reasonable estimate,” Staff will then be in a better position to analyze the Company’s request and “base recommendations for a general increase in the Company’s base rates.” *Id.* at 3. Based on its past audits of Brian Water, Staff’s initial opinion is that “without additional revenue, the Company does not have adequate funds to pay for the Preliminary Engineering Report.” *Id.*

Staff also remarked that the Company’s Application included a copy of a letter purporting to give notice to customers of the Company’s proposal to increase its rates for water service. *Id.* at 3. Strictly speaking, the letter does not comply with the requirements for customer notice outlined in the Commission’s Rules of Procedure because the letter “did not include the percentage of increase requested, nor did it include information regarding where the customer could review the application or how to contact the Commission.” *Id.* at 4; *see also* Rule 125, IDAPA 31.01.01.125. The Company also failed to issue a press release. *Id.* On May 4, 2012, the Commission issued its own press release summarizing Brian Water’s Application. *Id.*

On February 11, 2012, Brian Water did conduct a customer meeting regarding its Application, including the Company’s request for additional revenue. *Id.* at 4. Thus, Staff

believes that “the issues in this case have been brought to the attention of customers, and interested customers had the opportunity to discuss this case with the Company and make any concerns they might have known to the Commission.” *Id.* Staff does not advocate further sanctions in this case beyond directing the Company “to comply with Procedural Rule 125 in any future filings with the Commission.” *Id.*

Staff recommended the implementation of a \$15 monthly surcharge, for a period of six months beginning on June 1, 2012. *Id.* Staff recommended several specific provisions to ensure that the funds associated with the surcharge are dedicated toward the production of the engineering report mandated by the IDEQ. *Id.* at 4-5.

Staff notes that, if approved, the surcharge would generate approximately \$4,000 over a six-month period, June 1, 2012 through December 1, 2012. *Id.* at 4. Staff recommended that the Commission assess the need for an ongoing surcharge following completion of the Preliminary Engineering Report required by the IDEQ Amended Consent Order. *Id.*

#### **COMMISSION FINDINGS AND DECISION**

The Commission has reviewed the record in this proceeding and finds that Brian Water’s Application requesting authority to institute a customer assessment in order to fund the completion of a Preliminary Engineering Report to bring the Company into compliance with an IDEQ Consent Order is fair, just and reasonable. The Commission finds that the development of a nitrate mitigation plan is integral to the Company’s ability to comply with its obligation to provide safe and reliable water service to its customers. Specifically, the Commission authorizes Brian Water to institute a monthly customer surcharge of \$15 for a time period not to exceed six months.

Brian Water shall utilize all funds emanating from the temporary customer surcharge approved by the Commission in this Order for the sole purpose of paying for the Preliminary Engineering Report mandated by IDEQ. To that end, the Commission orders Brian Water to adhere to the following safeguards and measures:

1. All surcharge funds shall be deposited in a separate account. The surcharge funds shall not be co-mingled with the operating funds of Brian Water Corporation or the personal funds of Mr. Tony Bowar, the Company owner.
2. All payments from this separate account shall be made by properly identified checks. No counter checks shall be drawn on this account.

3. The separate account shall include the identifier - Surcharge Account. This identification should also appear on the deposit slips and checks.
4. Proper documentation shall be retained for audit purposes. This shall include copies of monthly bank statements showing deposits, cleared checks and the amount of each check. Also, the Company shall retain copies of current customer lists, meter reading lists, all contracts and any other item necessary to demonstrate the nature and amount of the payment or transaction.
5. The Surcharge Account, including all payments, collections and deposits shall be subject, upon one week's notice, to random audits by Staff of the Idaho Public Utilities Commission.
6. The Surcharge Account shall have priority in deposits from collections. All amounts collected from customers shall have the surcharge amount deducted from collections and deposited within one week of collection, prior to making deposits in any other account.
7. The amount of the surcharge shall be listed on customer bills as a single line item clearly identified as the surcharge and the amount of the surcharge.
8. Mr. Bowar and/or Brian Water Corporation shall be responsible for all taxes resulting from this surcharge.
9. These funds may be considered contributions in aid of construction. Consequently, normally capitalized expenditures will be reduced by the contribution for purposes of calculating depreciation expense, accumulated depreciation and rate base, for future ratemaking purposes.

Finally, the Commission will review a subsequent filing by Brian Water seeking additional funding for the completion of improvements to the Company's water system identified by the Preliminary Engineering Report and mandated by the IDEQ Consent Order.

#### **CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over Brian Water, a water utility, and the issues presented in Case No. BRN-W-12-01 pursuant to Idaho Code, Title 61, and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

#### **ORDER**

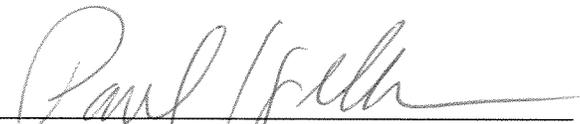
IT IS HEREBY ORDERED that the Application of Brian Water Corporation requesting the Commission's approval to institute a customer assessment in order to fund the

production of a Preliminary Engineering Report to bring the Company into compliance with an Idaho Department of Environmental Quality Consent Order is granted. The Company is authorized to institute a \$15 monthly customer surcharge for a time period not to exceed six months. The Company is authorized to recover a total not to exceed \$4,000 from the institution of the surcharge authorized herein.

IT IS FURTHER ORDERED that Brian Water shall comply with conditions imposed by the Commission in this Order and more fully described above.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 7<sup>th</sup> day of June 2012.

  
PAUL KJELLANDER, PRESIDENT

  
MACK A. REDFORD, COMMISSIONER

  
MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

O:BRN-W-12-01\_np2